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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANDREW HALPERIN,  
Petitioner,  
vs.  
MATTHEW CATE, et al.,  
Respondent.  
Case No. CV 11-5767-R (DTB)  
ORDER GRANTING PETITIONER'S  
MOTION FOR RECONSIDERATION  
UNDER RULE 60(b)

## PROCEEDINGS

On or about June 27, 2011, petitioner constructively filed a Petition for Writ of Habeas Corpus by a Person in State Custody herein. Based on the Court's initial review of the Petition, it appeared that the Petition contained several claims which had not been exhausted in the California Supreme Court. As such, on July 29, 2011, the Court issued an Order re Further Proceedings ordering petitioner to either withdraw his unexhausted claims or file a request for stay and abeyance. On August 31, 2011, petitioner filed a Request for Stay. Prior to ruling on the Request for Stay, the Court afforded respondent the opportunity to be heard. On September 20, 2011, respondent filed an Opposition to the Motion to Stay. Prior to ruling on petitioner's Request for Stay, he filed a document entitled "Petitioner Requests this Court to Treat 28 U.S.C. §2254 Application as a Non-Mixed Petition" on December 8, 2011, wherein he

1 provided the Court with a copy of the California Supreme Court’s denial of his habeas  
2 petition. Therefore, on December 12, 2011, the Court denied the Request for Stay as  
3 moot. In accordance with the Court’s Order Requiring Response to Petition, and after  
4 one extension of time, respondent filed a Motion to Dismiss Petition for Writ of  
5 Habeas Corpus on February 8, 2012, on the grounds that the Petition was untimely,  
6 and that it contained claims which were unexhausted. On March 7, 2012, petitioner  
7 filed his Opposition to the Motion. On September 21, 2012, the Court issued its  
8 Report and Recommendation (“R&R”) wherein it recommended that the Petition be  
9 dismissed as a mixed petition pursuant to Rose v. Lundy, 455 U.S. 509, 522, 102 S.  
10 Ct. 1198, 71 L. Ed. 2d 379 (1982). On November 8, 2012, petitioner filed his  
11 Objections to the R&R. The Magistrate Judge reviewed petitioner’s Objections and  
12 forwarded the same to the District Judge on November 14, 2012. On November 16,  
13 2012, the District Judge accepted the Magistrate Judge’s Findings, Conclusions and  
14 Recommendation (“Order”) making a reference that no objections were filed.

15 On December 3, 2012, petitioner filed a Motion for Reconsideration of the  
16 Court’s Order (“Motion”) which the Court construes as a motion for reconsideration  
17 pursuant to Fed.R.Civ.P. 60(a). The Court has now reviewed and considered the  
18 Motion.

19

## 20 PETITIONER’S MOTION

21 In his Motion, petitioner states “the November 16, 2012 judgment dismissing  
22 the petition as a mixed petition pursuant to Rose v. Lundy 455 U.S. 509, 518-22, 102  
23 S. Ct. (1982), based on the Petition, all the records and files, the Report and  
24 Recommendations of the United States Magistrate Judge David T. Bristol [sic], and  
25 the INCORRECT belief that no objections to the Report and Recommendations had  
26 been filed.” (Emphasis in original) (Motion at 1.)

27 Rule 60(a) of the Federal Rules of Civil Procedure provides:

28 The court may correct a clerical mistake or a mistake arising from

1 oversight or omission whenever one is found in a judgment, order, or  
2 other part of the record. The court may do so on motion or on its own,  
3 with or without notice. But after an appeal has been docketed in the  
4 appellate court and while it is pending, such a mistake may be corrected  
5 only with the appellate court's leave.

6

7 The Court has reviewed its file and hereby GRANTS petitioner's Motion as the  
8 Court made a clerical error on its Order making the reference to "no objections to the  
9 Report and Recommendation hav[ing] been filed." The Court notes that petitioner's  
10 Objections were received by the Court and the Court, having made a de novo  
11 determination of those portions of the Report and Recommendation to which  
12 objections had been made, accepted the Magistrate Judge's findings.

13 For the foregoing reasons, plaintiff's Motion is granted and the Court will enter  
14 an Amended Order Accepting Findings, Conclusions and Recommendations of Untied  
15 States Magistrate Judge, as well as an Amended Judgment, under separate cover.

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17 DATED: Dec. 14, 2012

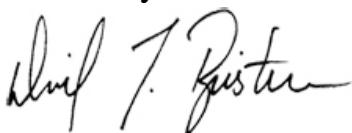


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20 MANUEL L. REAL  
21 UNITED STATES DISTRICT JUDGE

22 Presented by:



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25 David T. Bristow  
United States Magistrate Judge